



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2023-0429]

RIN 1625-AA08

Special Local Regulation; Henderson Bay, Henderson Bay, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a special local regulation for certain waters of Henderson Bay. This action is necessary to provide for the safety of life on these navigable waters near Henderson Bay, Henderson Bay, NY, during the swimming portion of a triathlon on July 8, 2023. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Sector Buffalo or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2023-0429 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST2 Andrew Nevenner, Waterways Management

Division, MSD Massena, U.S. Coast Guard; telephone 315-769-5483, email SMB-MSDMassena-WaterwaysManagement@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On March 27, 2023, the Henderson Business and Community Council notified the Coast Guard that it will be conducting the Henderson Harbor Triathlon Starting at 8 a.m on July 8, 2023. The swim portion of the triathlon will start and end at the Henderson Boat Launch and will be approximately 750-meters in length. This proposed rulemaking would prohibit persons and vessels from being in the special local regulation zone unless authorized by the Captain of the Port Buffalo or a designated representative.

The purpose of this rulemaking is to ensure the safety of life of the participants within the regulated area before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041.

III. Discussion of Proposed Rule

The COTP is proposing to establish a special local regulation from 8 a.m. through 11 a.m. on July 8, 2023. The special local regulation would cover all navigable waters within a 750-meter marked swim course near the Henderson Boat Launch. The duration of the zone is intended to ensure the safety of swimmers before, during, and after the scheduled 8 through 11 a.m. swimming event. No vessel or person would be permitted to enter the special local regulation area without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. Vessel traffic would be minimal due to the closure of the Henderson Boat Launch. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulation may be small entities, for the reasons stated in section IV.A above, this

proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would

not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a special local regulation lasting 3 hours that would prohibit entry within the regulated area. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2023-0429 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. Also, if you click on the Dockets tab and then the proposed rule, you should see a "Subscribe" option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided.

For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

2. In § 100.901, amend Table 1 by adding “Henderson Harbor Sprint Triathlon” to read as follows:

§ 100.901 Great Lakes annual marine events.

TABLE 1

SECTOR BUFFALO, NY:

FIREWORKS BY GRUCCI

SPONSOR: NEW YORK POWER AUTHORITY.

DATE: LAST WEEKEND OF JULY.

LOCATION: LAKE ONTARIO, WRIGHT'S LANDING/OSWEGO HARBOR, NY WITHIN AN
800 FOOT RADIUS OF THE FIREWORKS LAUNCHING PLATFORM LOCATED IN APPROXIMATE
POSITION 43°28'10" N 076°31'04" W.

FLAGSHIP INTERNATIONAL KILO SPEED CHALLENGE

SPONSOR: PRESQUE ISLE POWERBOAT RACING ASSOCIATION.

DATE: 3RD OR 4TH WEEKEND OF JUNE.

LOCATION: THAT PORTION OF LAKE ERIE, PRESQUE ISLE BAY, SOUTH OF A LINE
DRAWN FROM 42°08'54" N 080°05'42" W; TO 42°07' N 080°21' W WILL BE A REGULATED
AREA. THAT PORTION OF LAKE ERIE, PRESQUE ISLE BAY, NORTH OF A LINE DRAWN FROM
42°08'54" N 080°05'42" W; TO 42°07' N 080°21' W WILL BE A "CAUTION AREA". ALL
VESSELS TRANSITING THE CAUTION AREA WILL BE OPERATED AT BARE STEERAGEWAY,
KEEPING THE VESSEL'S WAKE AT A MINIMUM, AND WILL EXERCISE A HIGH DEGREE OF
CAUTION IN THE AREA. THE BAY ENTRANCE WILL NOT BE EFFECTED.

FLAGSHIP INTERNATIONAL OFFSHORE CHALLENGE

SPONSOR: PRESQUE ISLE POWERBOAT RACING ASSOCIATION.

DATE: 3RD OR 4TH WEEKEND OF JUNE.

LOCATION: THAT PORTION OF LAKE ERIE, PRESQUE ISLE BAY, ENTRANCE CHANNEL,
AND THE ENCLOSED AREA FROM ERIE HARBOR PIER HEAD LIGHT (LLNR 3430)
NORTHEAST TO 42°12'48" N 079°57'24" W, THENCE SOUTH TO SHORE JUST EAST OF
SHADES BEACH.

FRIENDSHIP FESTIVAL AIRSHOW

SPONSOR: FRIENDSHIP FESTIVAL

DATE: 4TH OF JULY HOLIDAY.

LOCATION: THAT PORTION OF THE NIAGARA RIVER AND BUFFALO.

HARBOR FROM:

LATITUDE	LONGITUDE
42°54.4' N	078°54.1' W, THENCE TO
42°54.4' N	078°54.4' W, THENCE
ALONG THE INTERNATIONAL BORDER TO	
42°52.9' N	078°54.9' W, THENCE TO
42°52.5' N	078°54.3' W, THENCE TO
42°52.7' N	078°53.9' W, THENCE TO
42°52.8' N	078°53.8' W, THENCE TO
42°53.1' N	078°53.6' W, THENCE TO
42°53.2' N	078°53.6' W, THENCE TO
42°53.3' N	078°53.7' W, THENCE
ALONG THE BREAKWALL TO	
42°54.4' N	078°54.1' W.

NFBRA RED DOG KILO TIME TRIALS

SPONSOR: NIAGARA FRONTIER BOAT RACING ASSOCIATION.

DATE: 4TH OR 5TH WEEKEND OF SEPTEMBER.

LOCATION: THAT PORTION OF THE NIAGARA RIVER, TONAWANDA CHANNEL, BETWEEN TONAWANDA CHANNEL BUOY 31 TO APPROXIMATELY 1/2 MILE SOUTHWEST OF TWOMILE CREEK ALONG A LINE DRAWN FROM 43°00'45" N 078°55'06" W TO 43°00'28" N 078°54'56" W (SIPCO OIL COMPANY).

SODUS BAY 4TH OF JULY FIREWORKS

SPONSOR: SODUS BAY HISTORICAL SOCIETY.

DATE: 4TH OF JULY HOLIDAY.

LOCATION: LAKE ONTARIO, WITHIN A 500 FOOT RADIUS AROUND A BARGE ANCHORED IN APPROXIMATE POSITION 43°15.73' N 076°58.23' W, IN SODUS BAY.

TALLSHIP ERIE

SPONSOR: ERIE MARITIME PROGRAMS, INC.

DATE: 1ST OR 2ND WEEKEND OF JULY.

LOCATION: THAT PORTION OF LAKE ERIE, PRESQUE ISLE BAY

ENTRANCE CHANNEL AND PRESQUE ISLE BAY FROM:

LATITUDE	LONGITUDE
42°10' N	080°03' W, THENCE TO
42°08.1' N	080°07' W, THENCE TO
42°07.9' N	080°06.8' W, THENCE

LATITUDE	LONGITUDE
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EAST ALONG THE SHORELINE AND STRUCTURES TO:

42°09.2' N	080°02.6' W, THENCE TO
42°10' N	080°03' W.

THOMAS GRAVES MEMORIAL FIREWORKS DISPLAY

SPONSOR: PORT BAY IMPROVEMENT ASSOCIATION.

DATE: 1ST OR 2ND WEEKEND OF JULY.

LOCATION: THAT PORTION OF LAKE ONTARIO, PORT BAY HARBOR, NY WITHIN A 500 FT RADIUS SURROUNDING A BARGE ANCHORED IN APPROXIMATE POSITION 43°17'46" N 076°50'02" W.

THUNDER ISLAND OFFSHORE CHALLENGE

SPONSOR: THUNDER ON THE WATER INC.

DATE: 3RD OR 4TH WEEKEND OF JUNE.

LOCATION: THAT PORTION OF LAKE ONTARIO, OSWEGO HARBOR FROM THE WEST PIER HEAD LIGHT (LLNR 2080) NORTH TO:

LATITUDE	LONGITUDE
43°29'02" N	076°32'04" W, THENCE TO
43°26'18" N	076°39'30" W, THENCE TO
43°24'55" N	076°37'45" W, THENCE

ALONG THE SHORELINE TO THE WEST PIER HEAD LIGHT (LLNR 2080).

WE LOVE ERIE DAYS FIREWORKS

SPONSOR: WE LOVE ERIE DAYS FESTIVAL, INC.

DATE: 3RD WEEKEND OF AUGUST.

LOCATION: THAT PORTION OF LAKE ERIE, ERIE HARBOR, WITHIN A 300 FOOT RADIUS, SURROUNDING THE ERIE SAND AND GRAVEL PIER, LOCATED IN POSITION 42°08'16" N 080°05'40" W.

CHRISTMAS IN JULY

SPONSOR: HENDERSON BUSINESS AND COMMUNITY COUNCIL

DATE: FINAL WEEKEND OF JULY

LOCATION: THE REGULATED AREA WOULD COVER ALL NAVIGABLE WATERS WITHIN HENDERSON BAY STARTING AT POINT 43°51'44"N 76°12'07.3"W AND RUNNING NORTH ADJACENT TO THE SHORE TO POINT 43°52'12.2"N 76°11'32.7"W, CONTINUING NORTHWEST TO POINT 43°53'40.9"N 76°12'40.6"W AND RUNNING SOUTH ADJACENT TO THE SHORE TO

POINT 43°51'47.2"N 76°14'08.3"W, ENDING AT THE STARTING POSITION AT POINT
43°51'44.0"N 76°12'07.3"W.

LATITUDE	LONGITUDE
43°51'44" N	076°12'07.3" W, THENCE TO
43°52'12.2" N	076°11'32.7" W, THENCE TO
43°53'40.9" N	076°14'08.3" W, THENCE
ALONG THE SHORELINE TO END AT THE STARTING POSITION).	

HENDERSON HARBOR SPRINT TRIATHLON

SPONSOR: HENDERSON BUSINESS AND COMMUNITY COUNCIL

DATE: ON OR AROUND THE 2ND WEEKEND OF JULY

ENFORCEMENT PERIOD: 0800-1100

LOCATION: THE REGULATED AREA WOULD COVER NAVIGABLE WATERS WITHIN
HENDERSON BAY STARTING AT POINT 43°51'02.5" N 076°12'21.9" W AND RUNNING
NORTHEAST ADJACENT TO THE SHORE TO POINT 43°51'05.9" N 076°12'12.2" W,
CONTINUING WEST TO POINT 43°51'06.2" N 076°12'21.2" W, ENDING AT STARTING
POSITION AT POINT 43°51'02.5" N 076°12'21.9" W.

LATITUDE	LONGITUDE
43°51'02.5" N	076°12'21.9" W, THENCE TO
43°51'05.9" N	076°12'12.2" W, THENCE TO
43°51'06.2" N	076°12'21.2" W, THENCE
(ALONG THE SHORELINE TO END AT THE STARTING POSITION).	

1 All coordinates listed in Table 100.901 reference Datum NAD 1983.

2 As noted in paragraph (a)(3) of this section, the enforcement dates and times for each of the listed events in this table are subject to change. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice to the public by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcast Notice to Mariner.

Dated: May 25, 2023.

Mark I. Kuperman,
Captain, U.S. Coast Guard,
Captain of the Port Buffalo.

